

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35569

STATE OF IDAHO,)	2009 Unpublished Opinion No. 466
)	
Plaintiff-Respondent,)	Filed: May 20, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
SANTOS SALVATORE SANCHEZ,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Michael R. McLaughlin, District Judge.

Judgment of conviction for burglary, affirmed.

Molly J. Huskey, State Appellate Public Defender; Heather M. Carlson, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

PERRY, Judge

Santos Salvatore Sanchez appeals from his amended judgment of conviction for burglary. Specifically, Sanchez challenges the district court's order of restitution. For the reasons set forth below, we affirm.

Sanchez was charged with burglary, I.C. § 18-1401, and grand theft by disposal, I.C. §§ 18-2403(1) and 18-2407(1)(b), after it was alleged that he broke into the home of C.H., stole numerous items, and sold them to a pawn shop. Sanchez pled guilty to burglary and the state dismissed the charge of grand theft by disposal. As part of the plea agreement, Sanchez agreed to pay for all losses sustained by C.H. related to the present case regardless of whether charges were filed or later dismissed. The district court sentenced Sanchez to a unified term of ten years, with a minimum period of confinement of two years.

At the restitution hearing, Sanchez argued that he should only be required to pay restitution for the items which he admitted taking and pawning. He contended that he did not

admit to taking all of the items which C.H. claimed were stolen from her home at the restitution hearing and, therefore, could not be responsible for their loss. The district court ordered restitution in the amount of \$799.95¹ for all the items taken from C.H.'s home which had not been recovered, including losses arising from uncharged misconduct or dismissed charges. The district court also ordered \$150 restitution for public defender expenses. Sanchez's judgment of conviction was amended to reflect these restitution amounts as found by the district court. Sanchez appeals.

We review a trial court's grant of restitution for an abuse of discretion. *State v. Russell*, 126 Idaho 38, 39, 878 P.2d 212, 213 (Ct. App. 1994). Idaho Code Section 19-5304 governs the award of restitution to victims of crime. Subsection (9) provides: "The court may, with the consent of the parties, order restitution to victims, and/or any other person or entity, for economic loss or injury for crimes which are not adjudicated or are not before the court." A victim's economic loss need only be shown by a preponderance of the evidence. I.C. § 19-5304(6).

In this case, Sanchez does not contest that I.C. § 19-5304(9) grants a trial court authority, with consent of the parties, to order restitution for injury caused by crimes or acts that are not being adjudicated before the court. Sanchez only argues that he objected to paying for these losses at the restitution hearing because they were attributable to the dismissed charge and uncharged conduct. Sanchez concedes however that, by his plea agreement, he agreed to pay for all losses suffered by C.H. related to this case regardless of whether charges were filed or later dismissed. Sanchez's disingenuous change of heart does not alter the agreement which he fully understood at the time he entered his guilty plea. Therefore, the district court did not abuse its discretion by ordering Sanchez to pay restitution for losses which arose from uncharged misconduct or dismissed charges. Accordingly, Sanchez's amended judgment of conviction is affirmed.

Chief Judge LANSING and Judge GUTIERREZ, **CONCUR.**

¹ The district court's restitution order and Sanchez's amended judgment of conviction reflect an amount of \$794.95. This appears to be a clerical error which the state can correct through an appropriate motion before the district court. I.C.R. 36.